

AMENDED IN ASSEMBLY APRIL 19, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 522

Introduced by Assembly Member Duvall

February 21, 2007

An act to amend and repeal Section 1764.1 of the Insurance Code, relating to nonadmitted insurers.

LEGISLATIVE COUNSEL'S DIGEST

AB 522, as amended, Duvall. Nonadmitted insurers.

Existing law, until January 1, 2008, specifies various duties of nonadmitted insurers and surplus line brokers transacting business in this state. Specifically, it gives applicants and policyholders ~~the right to~~ notice of the power to cancel the policy within 5 days under specified circumstances, and *notice* that the broker fee must be returned and that the premium must be prorated when a policy is cancelled. It imposes a similar requirement with respect to personal insurance and associated umbrella policies.

This bill, by repealing the January 1, 2008, termination date, would extend these provisions indefinitely.

Existing law, operative on January 1, 2008, specifies various duties of nonadmitted insurers and surplus line brokers transacting business in this state, but without the above-specified requirements.

This bill would repeal this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1764.1 of the Insurance Code, as amended by Section 1 of Chapter 95 of the Statutes of 2004, is amended to read:

1764.1. (a) (1) Every nonadmitted insurer, in the case of insurance to be purchased by a resident of this state pursuant to Section 1760, and surplus line broker, in the case of any insurance with a nonadmitted carrier to be transacted by the surplus line broker, shall be responsible to ensure that, at the time of accepting an application for any insurance policy, other than a renewal of that policy, issued by a nonadmitted insurer, the signature of the applicant on the disclosure statement set forth in subdivision (b) is obtained. In fulfillment of this responsibility, the nonadmitted insurer and the surplus line broker may rely, if it is reasonable under all the circumstances to do so, on the disclosure statement received from any licensee involved in the transaction as prima facie evidence that the disclosure statement and appropriate signature from the applicant have been obtained. The surplus line broker shall maintain a copy of the signed disclosure statement in his or her records for a period of at least five years. These records shall be made available to the commissioner and the insured upon request. This disclosure shall be signed by the applicant, and is not subject to any limited power of attorney agreement between the applicant and an agent or broker, or a surplus line broker. The disclosure statement shall be in boldface 16-point type on a freestanding document. In addition, every policy issued by a nonadmitted insurer and every certificate evidencing the placement of insurance shall contain, or have affixed to it by the insurer or surplus line broker, the disclosure statement set forth in subdivision (b) in boldface 16-point type on the front page of the policy.

(2) In any case where the applicant has not received and completed the signed disclosure form required by this section, he or she may cancel the insurance so placed. The cancellation shall be on a pro rata basis as to premium, and the applicant shall be entitled to the return of any broker's fees charged for the placement.

(b) The following notice shall be provided to policyholders and applicants for insurance as provided by subdivision (a), and shall be printed in English and in the language principally used by the surplus line broker and nonadmitted insurer to advertise, solicit,

1 or negotiate the sale and purchase of surplus line insurance. The
2 surplus line broker and nonadmitted insurer shall use the
3 appropriate bracketed language for application and issued policy
4 disclosures:

5
6 “NOTICE:
7

8 1. THE INSURANCE POLICY THAT YOU [HAVE
9 PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING
10 ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE
11 STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED
12 “NONADMITTED” OR “SURPLUS LINE” INSURERS.

13 2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL
14 SOLVENCY REGULATION AND ENFORCEMENT WHICH
15 APPLIES TO CALIFORNIA LICENSED INSURERS.

16 3. THE INSURER DOES NOT PARTICIPATE IN ANY OF
17 THE INSURANCE GUARANTEE FUNDS CREATED BY
18 CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL
19 NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF
20 THE INSURER BECOMES INSOLVENT AND IS UNABLE
21 TO MAKE PAYMENTS AS PROMISED.

22 4. CALIFORNIA MAINTAINS A LIST OF ELIGIBLE
23 SURPLUS LINE INSURERS APPROVED BY THE
24 INSURANCE COMMISSIONER. ASK YOUR AGENT OR
25 BROKER IF THE INSURER IS ON THAT LIST, *OR VIEW THAT*
26 *LIST AT THE WEB SITE OF THE CALIFORNIA DEPARTMENT*
27 *OF INSURANCE: WWW.INSURANCE.CA.GOV.*

28 5. FOR ADDITIONAL INFORMATION ABOUT THE
29 INSURER YOU SHOULD ASK QUESTIONS OF YOUR
30 INSURANCE AGENT, BROKER, OR “SURPLUS LINE”
31 BROKER OR CONTACT THE CALIFORNIA DEPARTMENT
32 OF INSURANCE, AT THE FOLLOWING TOLL-FREE
33 TELEPHONE NUMBER: ____.

34 6. IF YOU, AS THE APPLICANT, REQUIRED THAT THE
35 INSURANCE POLICY YOU HAVE PURCHASED BE BOUND
36 IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE
37 WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR
38 BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE
39 WITHIN TWO BUSINESS DAYS, AND YOU DID NOT
40 RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR

1 YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME
2 EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS
3 POLICY WITHIN FIVE DAYS OF RECEIVING THIS
4 DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM
5 WILL BE PRORATED AND ANY BROKER FEE CHARGED
6 FOR THIS INSURANCE WILL BE RETURNED TO YOU.”

7 (c) When a contract is issued to an industrial insured neither the
8 nonadmitted insurer nor the surplus line broker is required to
9 provide the notice required in this section except on the
10 confirmation of insurance, the certificate of placement, or the
11 policy, whichever is first provided to the insured, nor is the insurer
12 or surplus line broker required to obtain the insured’s signature.
13 The producer shall ensure that the notice affixed to the confirmation
14 of insurance, certificate of placement, or the policy is provided to
15 the insured. The producer shall insert the current toll-free telephone
16 number of the Department of Insurance as provided in paragraph
17 4 of the notice.

18 (1) An industrial insured is an insured:

19 (A) Which employs at least 25 employees on average during
20 the prior 12 months; and

21 (B) Which has aggregate annual premiums for insurance for all
22 risks other than workers’ compensation and health coverage
23 totaling no less than twenty-five thousand dollars (\$25,000); or

24 (C) Which obtains insurance through the services of a full-time
25 employee acting as an insurance manager or a continuously retained
26 insurance consultant. A “continuously retained insurance
27 consultant” does not include: (i) Any agent or broker through
28 whom the insurance is being placed, (ii) any subagent or
29 subproducer involved in the transaction, or (iii) any agent or broker
30 which is a business organization employing or contracting with
31 any person mentioned in clauses (i) and (ii).

32 (2) The surplus line broker shall be responsible to ensure that
33 the applicant is an industrial insured. A surplus line broker who
34 reasonably relies on information provided in good faith by the
35 applicant, whether directly or through the producer, shall be
36 deemed to be in compliance with this requirement.

37 (d) For purposes of compliance with the requirement of
38 subdivision (a) that the signature of the applicant be obtained, the
39 following shall apply:

1 (1) Where the insurance transaction is not conducted at an
2 in-person, face-to-face meeting, the applicant's signature on the
3 disclosure form may be transmitted by the applicant to the agent
4 or broker via facsimile or comparable electronic transmittal.

5 (2) In the case of commercial lines coverage, or personal
6 insurance coverage subject to Section 675 and any umbrella
7 coverage associated therewith, where an applicant requires that
8 insurance coverage be bound immediately, either because existing
9 coverage will lapse within two business days of the time the
10 insurance is bound or because the applicant is required to have
11 coverage in place within two business days, and the applicant
12 cannot meet in person with the agent or broker to sign the
13 disclosure form, the agent or broker may obtain the signature of
14 the applicant within five days of binding coverage, provided that
15 the applicant may cancel the insurance so placed within five days
16 of receiving the disclosure form from the agent or broker. The
17 cancellation shall be on a pro rata basis, and the applicant shall be
18 entitled to the rescission or return of any broker's fees charged for
19 the placement. When a policy is cancelled, the broker shall inform
20 the applicant that the broker fee must be returned and that the
21 premium must be prorated.

22 (e) Notwithstanding subdivision (a), this section shall not apply
23 to insurance issued or delivered in this state by a nonadmitted
24 Mexican insurer by and through a surplus line broker affording
25 coverage exclusively in the Republic of Mexico on property located
26 temporarily or permanently in, or operations conducted temporarily
27 or permanently within, the Republic of Mexico.

28 SEC. 2. Section 1764.1 of the Insurance Code, as added by
29 Section 2 of Chapter 95 of the Statutes of 2004, is repealed.